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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 CORY SPENCER, an individual;
12 DIANA MILENA REED, an
13 individual; and COASTAL
14 PROTECTION RANGERS, INC., a
California non-profit public benefit
corporation;

Plaintiffs,

v.

16 LUNADA BAY BOYS; THE
17 INDIVIDUAL MEMBERS OF
18 THE LUNADA BAY BOYS,
including but not limited to SANG
19 LEE, BRANT BLAKEMAN,
ALAN JOHNSTON aka JALIAN
20 JOHNSTON, MICHAEL RAE
PAPAYANS, ANGELO
21 FERRARA, FRANK FERRARA,
CHARLIE FERRARA, and N.F.;
22 CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE
JEFF KEPLEY, in his
23 representative capacity; and DOES
1 - 10,

Defendants.

Case No. 2:16-cv-02129-SJO-RAO

Assigned to District Judge:
Hon. S. James Otero; Courtroom: 10C
@ 350 W. First Street, L.A., CA 90012

Assigned Discovery:
Magistrate Judge: Hon. Rozella A. Oliver

**DEFENDANT ANGELO FERRARA'S
NOTICE OF MOTION AND
MOTION FOR PARTIAL SUMMARY
JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Filed concurrently with Separate
Statement of Uncontroverted Facts and
Evidence; Declaration of Mark C. Fields;
[Proposed] Order]

Date: August 21, 2017
Time: 10:00 a.m.
Ctrm: 10C; Hon. S. JAMES OTERO

Complaint Filed: March 29, 2016
Trial: November 7, 2017

1 **TO THE COURT AND ALL PARTIES AND TO THEIR ATTORNEYS**
2 **OF RECORD:**

3 PLEASE TAKE NOTICE that on August 21, 2017, at 10:00 a.m., in
4 Department 10C of the United States District Court, located at 350 W. First
5 Street, Los Angeles, 90012, Defendant Angelo Ferrara ("Angelo"), pursuant to
6 Federal Rule of Civil Procedure 56, will request the Court grant Defendant's
7 Motion for Partial Summary Judgment on the Complaint of Plaintiffs Cory
8 Spencer, Diana Milena Reed, and Coastal Protection Rangers (collectively
9 "Plaintiffs"), as follows:

10 Summary Judgment as to the First Cause of Action for violation of the
11 Bane Act (California Civil Code §52.1(b)) on the basis that Plaintiffs were not
12 prohibited from exercising their right to recreate in Lunada Bay.

13 Summary Judgment as to the Second Cause of Action for Public
14 Nuisance based on a failure of evidence.

15 Summary Judgment as to the conspiracy claims alleged in the First
16 and Second Causes of Action based on a failure of evidence.

17 Summary Judgment on the Sixth Cause of Action for Assault based on
18 a failure of evidence.

19 Summary Judgment on the Seventh Cause of Action for Battery based
20 on a failure of evidence.

21 This would leave only the Eighth Cause of Action for negligence
22 against Angelo.

23 This Motion is based on this Notice, the Memorandum of Points and
24 Authorities, all exhibits, the Declaration of Mark C. Fields, the Statement of
25 Uncontroverted Facts and Evidence, the Court's file in this action, all
26 matters of which this Court must or may take judicial notice and on such
27 further evidence and argument which may be presented at the hearing on
28

1 this matter.

2 This Motion is made following the conference of counsel pursuant to Local
3 Rule 7-3, which took place on July 14, 2017. (Declaration of Mark C. Fields, ¶ 5.)
4

5 Dated: July 24, 2017

LAW OFFICES OF MARK C. FIELDS, APC

6
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8 By



Mark C. Fields
Attorneys for Defendants
Angelo Ferrara and N.F.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND JOINDER**

3 Plaintiffs allege they have been prohibited from enjoying a small
4 stretch of beach in Southern California known as Lunada Bay. In their complaint
5 Plaintiffs allege Defendant Angelo Ferrara ("Angelo") has engaged in threats,
6 intimidation, assault, and battery to prevent them from enjoying the surf and
7 sand at Lunada Bay. However, plaintiffs Spencer and Reed have admitted that
8 they have no personal knowledge of ever having met Angelo or of Angelo
9 engaging in any wrongful behavior. Therefore, plaintiffs' claims for violation of
10 the Bane Act, public nuisance, civil conspiracy, assault, and battery should be
11 dismissed.

12 Angelo also hereby joins in the Motions For Summary Judgment or
13 Partial Summary Judgment, filed or to be filed by the Defendants in this lawsuit.
14 *Vasquez . Central States Joint Bd.*, 447 F. Supp.2d 833, 867 (N.D. Ill. 2008).

15 **II. FACTUAL SUMMARY**

16 **A. Factual Events Specified to Plaintiff Cory Spencer**

17 Before January 2016, Cory Spencer ("Spencer") visited Lunada Bay
18 on at least eight to ten occasions. [Separate Statement of Uncontroverted Facts
19 ("SSUF") 1]. Since January 29, 2016, Spencer has visited Lunada Bay on at
20 least three to five occasions. [SSUF 2].

21 Spencer has no personal knowledge of having ever met Angelo or
22 of Angelo engaging in any wrongful behavior. [SSUF 3].

23 **B. Factual Events Specific to Plaintiff Diana Reed**

24 Plaintiff Diana Milena Reed ("Reed") has visited Lunada Bay on at
25 least four occasions- January 6, 2016; January 29, 2016; February 5, 2016; and
26 February 13, 2016. [SSUF 4].

27 Spencer has no personal knowledge of having ever met Angelo or
28 of Angelo engaging in any wrongful behavior. [SSUF 5].

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C. Factual Events Specific to Plaintiff Coastal Protection Rangers

California Coastal Protection Rangers, Inc. ("CPR") makes no specific allegations nor does it provide any facts to support a claim for violation of the Bane Act, public nuisance, conspiracy, battery, or assault.

III. PROCEDURAL HISTORY

Plaintiffs' class action complaint was filed on March 29, 2016. [Docket Number 1]. The complaint alleges six causes of action against Defendant Angelo, including violation of the Bane Act, Public Nuisance, violations of various provisions of the California Coastal Act, assault, battery, and negligence. [Docket Number 1]. On July 11, 2016, this Court issued an Order granting a Motion to Dismiss the California Coastal Act claims. [Docket Number 84].

On February 21, 2017, this Court issued an Order denying Plaintiffs' Motion for Class Action Certification. [Docket No. 225]. On or about March 7, 2017, plaintiffs filed a Petition for Permission to Appeal with the United States Court of Appeals for the Ninth Circuit under Federal Rule 23(f). The Petition was denied.

Trial in this matter is set for November 7, 2017.

IV. STANDARD FOR A MOTION FOR SUMMARY JUDGMENT

A party moving for summary judgment has the initial burden to establish there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *F.R.Civ.P.*, Rule 56(c); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The moving party is not required to disprove matters upon which the non-moving party will have the burden of proof at trial; indeed, the moving party need not produce any evidence at all on those issues. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The moving party's burden is met simply by "'showing' – that is, pointing out to the District

1 Court – that there is an absence of evidence to support the non-moving party's
2 case." *Id.* at 325.

3 The opposing party's burden is to show a triable issue of fact as to
4 matters upon which he will bear the burden of proof at trial. "A complete failure
5 of proof concerning an essential element of the non-moving party's case
6 necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 323.
7 Summary judgment requires facts, not simply unsupported denials or rank
8 speculation. *Poppell v. City of San Diego* 149 F.3d 951, 954 (9th Cir. 1998).
9 "Where the nonmoving party will bear the burden of proof at trial on a dispositive
10 issue, Rule 56(e) requires the nonmoving party to go beyond the pleadings and by
11 her own affidavits, or by the 'depositions, answers to interrogatories and
12 admissions on file,' designate 'specific facts showing that there is a genuine issue
13 for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 323- 324 (1986). The mere
14 existence of a scintilla of evidence does not satisfy this standard; rather, the
15 plaintiff can meet it only with such admissible evidence that a reasonable trier of
16 fact could return a verdict in his or her favor. *Anderson v. Liberty Lobby*, 477 U.S.
17 242, 252 (1986).

18 **V. THERE IS NO GENUINE, MATERIAL FACTUAL DISPUTE AS**
19 **TO THE FIRST CAUSE OF ACTION FOR VIOLATION OF**
20 **THE BANE ACT.**

21 "California's Bane Act creates a cause of action when a defendant
22 interferes by threats, intimidation, or coercion, or attempts to interfere by threats,
23 intimidation, or coercion, with the exercise or enjoyment of rights secured by the
24 Constitution or laws of the United States, or of the rights secured by the
25 Constitution or laws of California." (*Gant v. County of L.A.* (9th Cir. 2014) 772
26 F.3d 608, 623).

27 To prevail on a Bane Act claim plaintiffs must make two showings; "(1)
28 defendants interfered with the plaintiffs' constitutional or statutory rights; and (2)

1 that interference was accompanied by actual or attempted threats, intimidation, or
2 coercion. Only if Plaintiffs can first establish that Defendants violated a
3 constitutional or statutory right can the Court consider whether such interference
4 was the product of threats, intimidation, or coercion." (Campbell v. Feld Entm 't,
5 Inc. (N D. Cal. 2014) 75 F. Supp. 3d 1193, 1211).

6 **A. Angelo Did Not Interfere with Plaintiffs' Constitutional or**
7 **Statutory Right**

8 Plaintiffs allege that Defendant has interfered with plaintiffs' "state
9 and federal rights to recreate in Lunada Bay." (Docket No. 1, ¶50). Plaintiffs,
10 however, cite no actual statutory or constitutional provision in support of this
11 claim. Nor do plaintiffs cite any authority to suggest that Bane Act liability may be
12 premised on a violation of a person's right to use the public beaches.

13 Nevertheless, plaintiffs right to recreate at Lunada Bay was not been
14 interfered with because both Cory Spencer and Diana Reed have recreated at
15 Lunada Bay on several occasions. There is no evidence to suggest that CPR, as an
16 entity, has the ability to recreate at Lunada Bay.

17 **1. Plaintiff Cory Spencer**

18 Spencer's constitutional right to recreate at Lunada Bay has not been
19 violated because Spencer has visited Lunada Bay at least thirteen times. [SSUF 1
20 and 2]. Spencer has also surfed and recreated at Lunada Bay in January and
21 February 2016, as alleged in his complaint. (Docket Number 1, ¶21). Clearly
22 Spencer's right to recreate at Luanda Bay has not been impeded because he has
23 successfully done so on over a dozen occasions. There is no evidence to suggest
24 that Spencer was refused access to Lunada Bay on any of these visits.

25 **2. Plaintiff Diana Reed**

26 Reed visited Lunada Bay on January 6, 2016; January 29, 2016;
27 February 5, 2016; and February 13, 2016. [SSUF 4]. Similar to Spencer, Reed's
28 right to recreate at Lunada Bay has not been interfered with because she has clearly

1 been to Lunada Bay on numerous occasions.

2 **3. Plaintiff Coastal Protection Rangers**

3 CPR makes no specific allegations nor does it provide any facts to
4 support a claim for violation of the Bane Act. [Docket Number 1]. Because CPR is
5 an entity it is unclear how CPR could have been deprived of its constitutional right
6 to recreate. There are also no facts to suggest that CPR has attempted to recreate at
7 Lunada Bay, therefore no interference has occurred.

8 **B. Angelo Did Not Threaten, Intimidate, or Coerce Plaintiffs**

9 Even if the court determines that plaintiffs' right to recreate was
10 interfered with, even though evidence suggests it was not, it is undisputed that
11 Angelo did not threaten, intimidate, or coerce plaintiffs.

12 **1. Plaintiff Cory Spencer**

13 Spencer has no personal knowledge of ever having met Angelo or of
14 Angelo engaging in any wrongful behavior. [SSUF 3].

15 **2. Plaintiff Diana Reed**

16 Reed has no personal knowledge of ever having met Angelo or of
17 Angelo engaging in any wrongful behavior. [SSUF 3].

18 **3. Plaintiff Coastal Protection Rangers**

19 Again, CPR makes no specific allegations against Angelo and it does
20 not provide any facts to support the claim that Angelo has threatened, intimidated,
21 or coerced the entity. There is no evidence to suggest that Angelo has had any
22 interaction with CPR.

23
24 **VI. THERE IS NO GENUINE, MATERIAL FACTUAL DISPUTE AS**
25 **TO THE SECOND CAUSE OF ACTION FOR PUBLIC**
26 **NUISANCE**

27 Plaintiff brings a cause of action for public nuisance under California
28 Civil Code §§3479 and 3480, as well as public nuisance per se pursuant to the City

1 of Palos Verdes Estates Municipal Code ("PVE Code") §8.48.015.

2 **A. Public Nuisance under California Civil Code §§3479 and**
3 **3480**

4 "A nuisance affecting an entire community or neighborhood, or any
5 considerable number of persons is a public nuisance." (*Castaic Lake Water Agency*
6 *v. Whittaker Corp.* (C.D. Cal. 2003) 272 F.Supp.2d 1053, 1070). "California law
7 defines a nuisance, in part, as anything which is injurious to health or is indecent or
8 offensive to the senses, or an obstruction of the free use of property, so as to
9 interfere with the comfortable enjoyment of life or property." (*Coppola v. Smith*
10 (E.D.Cal. 2013) 935 F.Supp.2d 993, 1017).

11 "Actions to abate a public nuisance may be maintained either by a
12 public body authorized by law or by a private party who has been specially injured
13 by the nuisance." (*Castaic Lake Water Agency v. Whittaker Corp.* (C.D. Cal. 2003)
14 272 F.Supp.2d 1053, 1070). California Civil Code §3493 provides that "a private
15 person may maintain an action for a public nuisance, if it is specially injurious to
16 himself, but not otherwise. "California courts generally have limited the group of
17 plaintiffs with standing to sue on a public nuisance theory to plaintiffs who can
18 show special injury to himself of a character different in kind-not merely in degree-
19 from that suffered by the general public. (*Ileto v. Glock In.* (9th Cir. 2003) 349 F.3d
20 1191, 1211).

21 Since neither Spencer or Reed have any personal knowledge of ever
22 meeting Angelo or of Angelo engaging in any wrongful behavior, there are no facts
23 to prove that Angelo caused plaintiffs a substantial harm rising to the level of a
24 public nuisance.

25 None of the plaintiffs have facts to support a public nuisance claim
26 because none of the plaintiffs were substantially harmed by Angelo;

27 **B. Public Nuisance under PVE Code §8.48.015**

28 Plaintiffs allege the following violations constitute a public nuisance

1 under the PVE Code §8.48.015: Smoking in undeveloped public places
2 (§8.56.020); erecting, placing, constructing, establishing, or maintaining any
3 structure or object on public property without a permit (§12.04.020); making or
4 causing to be made any excavation, cut, or fill in any public place in the city without
5 a permit (§12.12.020); violating city rules governing use and enjoyment by the
6 public of any park or grounds (§12.24.020); disorderly conduct (§ 12.24.100);
7 violating building codes (§15.08.130); failure to obtain a coastal development
8 permit (§19.020.030).

9 There is no evidence to suggest that Angelo has violated any of the
10 aforementioned code sections or engaged in the unlawful behavior outlined therein.

11 **VII. THERE IS NO GENUINE, MATERIAL FACTUAL DISPUTE AS**
12 **TO CONSPIRACY CLAIM**

13 Civil conspiracy is not an independent tort, rather it is a legal doctrine
14 that imposes liability on persons who, although not actually committing a tort
15 themselves, share with the immediate tortfeasors a common plan or design in its
16 perpetration. (*Idema v. Dreamworks, Inc.* (C.D.Cal. 2001) 162 F.Supp.2d 1129,
17 1196-1197).

18 "Under California law, a conspiracy is an agreement entered into
19 between two or more persons with the specific intent to agree to commit a specified
20 crime, with the further specific intent to commit that crime, followed by an overt act
21 committed in the state by one (or more) of the parties for the purpose of
22 accomplishing the object of the agreement." (*United States v. Fernandez* (9th Cir.
23 2004) 388 F.3d 1199, 1225).

24 California law makes clear, however, that knowledge alone of tortious
25 conduct is insufficient to prove a conspiracy agreement. Actual knowledge of the
26 planned tort, without more, is insufficient to serve as the basis for a conspiracy
27 claim. Knowledge of the planned tort must be combined with intent to aid in its
28 commission. (*Sebastian Int'l, Inc. v. Russolillo* (C.D.Cal 2001) 162 F.Supp.2d 1198,

1 1207).

2 Plaintiffs have failed to provide any evidence suggesting that Angelo
3 agreed to commit a crime.

4 **VIII. THERE IS NO GENUINE, MATERIAL FACTUAL DISPUTE AS**
5 **TO THE SIXTH CAUSE OF ACTION FOR ASSAULT**

6 Assault is the unlawful attempt, coupled with a present ability, to
7 commit a violent injury on the person of another. (*Tekle v. United States* (9th Cir.
8 2007) 511 F.3d 839, 855). "Harmful or offensive contact, intentionally done, is the
9 essence of battery, while apprehension of that contact is the basis of assault." *Id.*
10 "To establish civil assault, a plaintiff would need to establish that (1) defendants
11 threatened to touch him in a harmful or offensive manner; (2) it reasonably appeared
12 to him that they were about to carry out the threat; (3) he did not consent to the
13 conduct; (4) he was harmed; and (5) the defendants' conduct was a substantial factor
14 in causing the harm." *Id.*

15 Neither Spencer nor Reed have any personal knowledge of having met
16 Angelo or of Angelo engaging in any wrongful behavior. [SSUF 3, 5]. As an
17 entity, it is entirely unclear how CPR intends to support its claim for assault. There
18 are no facts to suggest that Angelo touched CPR in a harmful or offensive manner or
19 that CPR is even capable of being apprehensive of contact.

20 **IX. THERE IS NO GENUINE, MATERIAL FACTUAL DISPUTE AS**
21 **TO THE SEVENTH CAUSE OF ACTION FOR BATTERY**

22 "A battery is any willful and unlawful use of force or violence upon the
23 person or another." (*Tekle v. United States* (9th Cir. 2007) 511 F.3d 839, 855). The
24 elements of a battery claim in California are that (1) the defendant intentionally did
25 an act that resulted in harmful or offensive contact with the plaintiff's person, (2) the
26 plaintiff did not consent to that contact, and (3) the contact caused injury, damage,
27 loss or harm to the plaintiff. *Id.*

28 Neither Spencer nor Reed have any personal knowledge of having met

1 Angelo or of Angelo engaging in any wrongful behavior. [SSUF 3, 5]. As an entity,
2 it is entirely unclear how CPR intends to support its claim for battery. There are no
3 facts to suggest that Angelo ever physically touched CPR.

4 **X. THERE IS NO LEGITIMATE CLAIM FOR INJUNCTIVE**
5 **RELIEF**

6 Plaintiffs allege that they are entitled to injunctive relief under
7 California Civil Code §52.1. An injunction is only available when there is a real or
8 immediate threat that plaintiffs will be harmed again, which is not present in this
9 case. To obtain an injunction, plaintiffs must show they are in immediate danger of
10 sustaining some direct injury as the result of the challenged official conduct, and
11 that the injury must be real and immediate, not conjectural or hypothetical. In fact,
12 "past exposure to illegal conduct does not in itself show a present case or
13 controversy regarding injunctive relief... if unaccompanied by any continuing
14 present adverse effects." *O'Shea v. Littleton* (1974) 414 U.S. 488, 496.

15 Because plaintiffs have not been restricted from recreating at Lunada
16 Bay, there is no immediate threat that an injunction would be able to protect.
17 Further, because both Spencer and Reed admit they have no personal knowledge of
18 ever having met Angelo or of Angelo engaging in wrongful behavior, it is unclear
19 what an injunction would seek to relieve.

20 **XI. CONCLUSION**

21 Based on the foregoing, Defendant respectfully requests the Court grant
22 this Motion in its entirety.

23 Dated: July 24, 2017

LAW OFFICES OF MARK C. FIELDS, APC

24
25 By  _____

26 Mark C. Fields
27 Attorneys for Defendants
28 Angelo Ferrara and N.F.